

Sti India Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-21-2004

Reported in : (2004)(94)ECC274

Judge : A T V.K., P Bajaj

Appellant : Sti India Ltd.

Respondent : Cce

Judgement :

1. M/s STI India Ltd. have filed the present appeal against Order-in-Appeal No. 377/2003 dated 14.7,2003 by which the Commissioner (Appeals) has confirmed the rejection of their refund on account of time bar.

2. Shri K.K. Anand, learned Advocate, submitted that the Appellants manufacture cotton yarn, cotton fabric, and cotton polyster yarn; that they availed Modvat Credit of the duty paid on the inputs; that by virtue of availing the benefit under EPCG Scheme they were exporting their goods to fulfil the export obligation and there was hardly any sale of the goods indigenously; that, therefore, they could not utilize Modvat Credit towards payment of Central Excise duty. They filed a refund claim for refund of the credit lying in their RG-23A, Part-II; that the Asst. Commissioner under Order-in-Original No. 313/99 dated 30.12.99 rejected their refund claim as time barred as the refund claim was filed on 27.7.99 in respect of the goods exported during October 1998; that the Commissioner (Appeals) also under the impugned Order has rejected their appeal. He, further, submitted that

the time limit of 6 months specified in Section 11B of the Central Excise Act is not applicable to refund of unutilized credit balance lying in RG-23A, Part-II; that Section 11B of the Central Excise Act relates to the refund of duty of Excise only paid by an assessee on not other amounts; that there is no time limit fixed for utilization of credit validly availed, and therefore, refund of credit lying in RG23A, Part II account is not a refund of duty but an incentive to manufacturer -- exporter to promote export and earn valuable foreign exchange for the country; that their contention is further strengthened from the relevant dates mentioned in Sub-clause (b) of Explanation under Section 11B; that close study of relevant dates would reveal that all the cases pertain to refund of duty of Excise and there is no relevant date for refund of credit of duty paid on excisable goods used as inputs in accordance with the Rules; that, therefore, it is conclusively proved that this type of refund does not come within the category of refund of duty envisaged in Section 11B of the Act.

3. Countering the arguments Shri U. Raja Ram, learned DR, submitted that Sub-rule (13) of Rule 57F of the Central Excise Rules, 1944 at the relevant time provided for the refund of Modvat Credit, if the inputs have been used in the final products which were cleared for export under bond subject to such conditions and limitations as may be specified by the Central Government by Notification; that such a Notification No. 85/87-CE dated 1.3.87 has been issued by the Central Government in exercise of powers conferred under Rule 57F; that condition No. 7 of the Notification clearly provides that the application for refund together with the proof of due exportation and the relevant extract of form RG-23A in original are lodged with the Asst. Commissioner, Central Excise before the expiry of the period specified in Section 11B of the Central Excise and Salt Act; that thus it is apparent that the provisions of Section 11B of the Central Excise Act are applicable to the refund of the Modvat Credit on account of exportation of the goods and non-utilization of the Credit towards payment of duty.

4. We have considered the submissions of both the sides. The learned DR has rightly submitted that the provisions of Section 11B of the Central Excise Act has been made applicable to the refund in question by issue of Notification No. 85/87-CE dated 1.3.87 issued in exercise of the powers under Section 57F of the Central

Excise Rules, 1944. The Modvat Credit lying unutilized in RG-23A, Part-II is available to the Appellants only under the provisions of Rule 57F when the goods in which the inputs have been used are exported and the Appellants are not in a position to utilize the said credit towards payment of duty of Excise. The refund is available subject to the conditions specified by the Central Government by Notification. Condition No. 6 of the Notification provides that refund shall be allowed only in those Circumstances where a manufacturer is not in a position to utilize the credit of the duty allowed under Rule 57A against goods exported during quarter to which the scheme relates. It is not in dispute that the scheme relates to quarter, October 1998 to December 1998, and the claim for refund was filed by them on 27.7.99 which is beyond the period of 6 months specified in Section 11B of the Central Excise Act. We, therefore, find no reason to interfere with the impugned Order and reject the appeal filed by the Appellants.

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